

DANIELLE FONG

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REFERENCE LIST

Daniel Kiel

Professor of Law at Cecil C. Humphreys School of Law

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Lauran Stimac

Shareholder at Glassman, Wyatt, Tuttle & Cox

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Phone – (901) 527 - 4673

Applicant Details

First Name **Victor**
 Last Name **Gibson**
 Citizenship Status **U. S. Citizen**
 Email Address gibsonvictor92@gmail.com
 Address

Address
Street
1740 NW N River Drive APT 318
City
Miami
State/Territory
Florida
Zip
33125
Country
United States

Contact Phone Number **813-777-5294**

Applicant Education

BA/BS From **University of Florida**
 Date of BA/BS **May 2016**
 JD/LLB From **Boston University School of Law**
http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=12202&yr=2009
 Date of JD/LLB **May 15, 2019**
 Class Rank **I am not ranked**
 Law Review/Journal **Yes**
 Journal(s) **American Journal of Law & Medicine**
 Moot Court Experience **Yes**
 Moot Court Name(s) **J. Newton Esdaile Appellate Moot Court Program**

Bar Admission

Admission(s) **Florida**

Prior Judicial Experience

Judicial
Internships/ **No**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Recommenders

Maclin, Tracey
tmaclin@bu.edu
(617) 353-4688
Page, Autumn
autumnraepage@gmail.com
Brozinsky, Noah
nbrozinsky@gmail.com
(858) 735-9275

This applicant has certified that all data entered in this profile and any application documents are true and correct.

The Honorable John T. Copenhaver Jr.
United States District Court for the Southern District of West Virginia

Dear Judge Copenhaver:

My name is Victor Gibson, and I am writing to apply for a clerkship position in your chambers. For the past two and a half years, I have worked as an Assistant Public Defender at the Miami-Dade Public Defender's office, most recently in its felony division. Due to my substantial experience researching, writing, and litigating motions, as well as managing a heavy caseload, I believe I am a strong candidate for a clerkship position.

Researching and writing about various legal issues has been my favorite part of working as an Assistant Public Defender. Once I come across a legal issue that may be useful to a client's case, a sense of excitement overcomes me. In preparing my written motions and outlines for oral arguments, I ensure no stone goes unturned by scouring Westlaw for all relevant opinions and arguments. Put simply, legal research and writing is my passion.

The training I have received both at Boston University School of Law and at the Miami-Dade Public Defender's Office leads me to believe I would be a valuable asset to your chambers. While in law school, I composed substantive, thoroughly researched motions and legal memoranda while interning for organizations such as Southern Poverty Law Center and the Boston Public Defender's Office. During my time as an Assistant Public Defender, I applied these strong research and writing skills to my aggressive pretrial motion practice, having developed several creative and well-reasoned motions that often resulted in great outcomes for my clients' cases.

I believe I can apply the same strong work ethic with which I have represented indigent clients to the research and writing assignments I would work on as a law clerk. I am happy to provide you with any additional information. Thank you for your consideration, and I look forward to hearing from you.

Sincerely,

Victor C. Gibson

Victor C. Gibson

1740 NW N River Drive #318, Miami, FL 33125 · (813) 777-5294 · gibsonvictor92@gmail.com

EDUCATION

Boston University School of Law, Boston, MA

J.D., 2019

GPA: 3.44

Honors: *American Journal of Law & Medicine*, 2L Staff Member

University of Florida, Gainesville, FL

B.A., *summa cum laude*, in Latin American Studies/ B.A., *cum laude*, in Political Science, 2016

GPA: 3.72

LEGAL EXPERIENCE

Miami-Dade County Public Defender's Office, Miami, FL

September 2019 – March 2022

Assistant Public Defender, Felony Division

- Drafted and filed over 100 motions to dismiss and motions to suppress raising novel Constitutional, statutory interpretation arguments, many of which led to case dismissals prior to hearing
- Litigated fifteen motions to dismiss and motions to suppress
- Drafted and filed over 100 other various pretrial motions, including motions to compel discovery, motions to depose, motions *in limine*, motions to modify bond, motions for sanctions
- Managed a 100+ felony caseload consisting of first-degree, second-degree, and third-degree felony charges, as well as felony probation violation cases
- Regularly advised clients facing punishments ranging from six months' probation to life in state prison
- Deposed over 100 witnesses, including law enforcement officers and expert witnesses

Southern Poverty Law Center, Tallahassee, FL

June 2018 – August 2018

Legal Intern, Children's Rights Department

- Researched and drafted memoranda on state ethics laws, ballot measure proposals, public records requests, and Baker Act notice requirements

Committee for Public Counsel Services, Boston, MA

January 2018 – April 2018

Legal Extern, Public Defender Division, District Court Office

- Drafted motions to suppress and dismiss involving various evidentiary, statutory, and constitutional issues, including suppression of statements, seizures, and identifications due to unduly suggestive procedures

Greater Boston Legal Services, Boston, MA

May 2017 – August 2017

Legal Intern, Housing Unit

- Researched and drafted memoranda on various HUD program regulations and statutes regarding landlord-tenant disputes

ADDITIONAL WORK EXPERIENCE

Publix Supermarkets, Tampa, FL/Gainesville, FL

December 2006 – March 2016

Bagger/Cashier/Produce Clerk/Customer Service Staff

BAR ADMISSIONS

Florida; United States District Court for the Southern District of Florida

LANGUAGE SKILLS

Proficient in Spanish

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BOSTON UNIVERSITY SCHOOL OF LAW

Name: GIBSON, VICTOR C

Date Entered: 09/06/2016

Colleges and Degrees:

UNIVERSITY OF FLORIDA, B.A. 5/3/2016

Degree Awarded: JURIS DOCTOR

Date Graduated: 5/19/2019

Honors:

Other Law School Attendance:

Academic Record		Credits	Grades
Semester 1 - 2016 -2017			
CONSTITUTIONAL LAW (C)	BAXTER	4	B+
CONTRACTS (C)	PETTIT	4	B
RESEARCH & WRITING SEMINAR I	LIEBERMAN	1.5	A-
TORTS (C)	ZEILER	4	B
Semester 2 - 2016 -2017			
ADMINISTRATIVE LAW (C)	BEERMANN	3	B+
CIVIL PROCEDURE (C2)	GUGLIUZZA	4	B
CRIMINAL LAW (C)	SLOANE	4	B
LAWYERING LAB	STAFF	1	P
MOOT COURT		-	P
PROPERTY (C)	DI ROBILANT	4	B+
RESEARCH & WRITING SEMINAR II	LIEBERMAN	1.5	B+
Semester 3 - 2016 -2017			
BUSINESS FUNDAMENTALS	WALKER	-	P

Year	Hours	Weighted Points	Weighted Average					
1st	30/31	94.80	3.16					

Semester 1 - 2017 -2018								
AMERICAN JOURNAL OF LAW & MEDICINE - 2L MEMBER				1				CR
CIVIL RIGHTS LITIGATION	BEERMANN			4				B+
CRIMINAL PROCEDURE: INVESTIGATORY	MACLIN			4				A
IMMIGRATION LAW	SHERMAN-STOKES			3				A
Semester 2 - 2017 -2018								
AMERICAN JOURNAL OF LAW & MEDICINE - 2L MEMBER				1				CR
EVIDENCE	CAVALLARO			4				B
INDEPENDENT EXTERNSHIP: FIELDWORK				5				P
INDEPENDENT EXTERNSHIP: IND STUDY	KAPLAN			2				A
MENTAL HEALTH LAW	SPH			4				B

Year	Hours	Weighted Points	Weighted Average	Cumulative Hours	Cumulative Points	Cumulative Average		
2nd	17/28	61.20	3.60	47/59	156.00	3.32		

Semester 1 - 2018 -2019								
CRIMINAL TRIAL PRACTICE I (C)	ROSSMAN			5				B
FEDERAL COURTS	YACKLE			4				CR
PROFESSIONAL RESPONSIBILITY	DONWEBER			3				B
TRIAL ADVOCACY	KELLEY			3				A
Semester 2 - 2018 -2019								
CRIMINAL TRIAL PRACTICE II/DEFENDERS (C)	PITA LOOR			8				A
PRIVACY (S)	MORTENSEN			3				A
WHITE COLLAR CRIME	DADDIO/BURKART			3				A

Year	Hours	Weighted Points	Weighted Average	Cumulative Hours	Cumulative Points	Cumulative Average	Total Hours	Final Average
3rd	25/29	92.00	3.68	72/88	248.00	3.44	72/88	3.44

1974 Family Educational Rights and Privacy Act Information

The information contained on this transcript is not subject to disclosure to any other party without the expressed written consent of the student or his/her legal representative. It is understood this information will be used only by the officers, employees and agents of your institution in the normal performance of their duties. When the need for this information is fulfilled, it should be destroyed.

Status: (Good Standing is certified unless otherwise noted)

This record is a certified transcript only if it bears an official signature below.

Aida E. Ten, Registrar

Date Printed: 6/3/2019

Boston University School of Law Transcript Guide

SYMBOLS OR ABBREVIATIONS

AUD	Audit	H	Honors
CR	Credit	NC	No credit
P	Pass	F	Fail
W/D	Withdrawal from course		
*	Indicates currently enrolled		
(C)	Clinical		
(S)	Seminar		
(Y)	Year-long course		

Academic Qualifications – JD Program: The School of Law has a letter grading system in courses and seminars. The minimum passing grade in each course and seminar is a **D**. Beginning with the Class of 2017, a minimum of eighty-five passing credit hours must be completed for graduation. Prior classes required a minimum of eighty-four passing credit hours. The minimum average for good standing is C (2.0) and the minimum average for graduation is C+ (2.3). Prior to 2006 the minimum average for good standing and graduation was C (2.0).

GRADING SYSTEM

1. Current Grading System The following letter grade system is effective fall 1995. The faculty has set the following as an appropriate scale of numerical equivalents for the letter grading system used in the School of Law:

A+	4.3	C+	2.3
A	4.0	C	2.0
A-	3.7	C-	1.7
B+	3.3	D	1.0
B	3.0	F	0
B-	2.7		

For all courses and seminars with enrollments of 26 or more, grade distribution is mandatory as follows:

A+	0-5%
A+, A, A-	20-30%
B+ and above	40-60%
B	10-50%
B- and below	10-30%
C+ and below	0-10%
D, F	0-5%

2. Fall 1995-Spring 2008

For **first-year courses** with enrollment of twenty-six or more, grade distribution is mandatory as follows:

A+	0-5%
A+, A, A-	20-25%
B+ and above	40-60%
B	10-50%
B- and below	10-30%
C+ and below	5-10%
D, F	0-5%

3. 1991 Changes to Letter Grade System.

The curve is mandatory for all seminars or courses with enrollments of twenty-six or more. Grade Number Equivalent Curve

A+	4.5	
A	4.0	15-20%
B+	3.5	
B	3.0	50-60%
C+	2.5	
C	2.0	20-35%
D	1.0	
F	0	

The median for all courses with enrollments of twenty-six or more is B. For smaller courses, a median of B+ is recommended but not required.

GRADES FOR COURSES TAKEN OUTSIDE THE SCHOOL OF LAW

Grades for courses taken outside of BU Law are recorded as transmitted by the issuing institution or as CR. Credit toward the degree is granted for these courses and no attempt is made to convert those grades to the BU Law grading system. The grade is not factored into the law school average.

CLASS RANKS

BU Law does not rank students in the JD program with the following exceptions:

Mid-Year Ranks

Effective May 2014, the Registrar is authorized to release the g.p.a. cut-off points to the top 5%, 10%, 15%, 20%, 25% and one-third for the fifth semester in addition to third semester reporting adopted May 2013 and yearly reporting of the same.

Effective January 2013

For students who have completed their third semester, with respect to the cumulative average earned during the fall semester, the Registrar will inform the top fifteen students of their rank and will provide g.p.a. cut-off points for the top 10 percent, 25 percent and one-third of the class. This is in addition to the yearly reporting described below.

Effective May 2011

For students who have completed their first year, the Registrar will inform the top five students in each section of their section rank and will provide grade point average cut-offs for the top 10 percent, 25 percent and one-third of each section.

For students who have completed their second year or third year, with respect to both the average earned during the most recent year and cumulative average, the Registrar will inform the top fifteen students of their rank and will provide g.p.a. cut-off points for the top 10 percent, 25 percent and one-third of the class.

Class of 2008 and subsequent classes through April 2011.

For students who have completed their first year, the Registrar will inform the top five students in each section of their section rank and will provide g.p.a. cut-off points for the top 10 percent of each section.

For students who have completed the second year or third year, with reference to both the second-year or third-year g.p.a. and cumulative g.p.a., the Registrar will inform the top fifteen students in the class of their ranks and will provide g.p.a. cut-off points for the top 10 percent of the class.

Scholarly Categories (Based on yearly averages only)

Class of 2008 and subsequent classes:
First Year – the top five students in each first-year section will be

designated G. Joseph Tauro

Distinguished Scholars. The remaining students in the top ten percent of each first-year section will be designated G. Joseph Tauro Scholars.

Second Year – the top fifteen students in the second year class will be designated Paul J. Liacos Distinguished Scholars. The remaining students in the top ten percent of the second-year class will be designated Paul J. Liacos Scholars.

Third Year – the top fifteen students in the third year class will be designated Edward F. Hennessey Distinguished Scholars. The remaining students in the top ten percent of the third-year class will be designated Edward F. Hennessey Scholars.

Graduate Program Transcript Guides

LL.M. in Taxation

Current Grading System:

A+	4.3	C+	2.3
A	4.0	C	2.0
A-	3.7	C-	1.7
B+	3.3	D	1.0
B	3.0	F	0
B-	2.7		

The grade averages of continuing part-time students whose enrollment began before the fall 1995 semester were converted to the new number equivalents.

Fall 1991 to Spring 1995

From the fall 1991 semester through the spring 1995 semester, the following letter grading system was in effect for students who were graduated before the fall 1995 semester:

A+	4.5	C+	2.5
A	4.0	C	2.0
B+	3.5	D	1.0
B	3.0	F	0.0

Current Degree Requirements

Effective May 2016, completion of 24 credits. Minimum average of 2.3 and no more than one grade of D.

Spring 1993 to Fall 2015

Completion of 24 credits. Minimum average of 3.0 and no more than one grade of D.

Fall 1991 to Fall 1993

Completion of ten courses (20 credits). Minimum average of 3.0 (with no more than one grade below 1.0).

LL.M. in Banking and Financial Law

Current Grading System

A+	4.3	C+	2.3
A	4.0	C	2.0
A-	3.7	C-	1.7
B+	3.3	D	1.0
B	3.0	F	0
B-	2.7		

Current Degree Requirements

Effective April 2016, completion of 24 credits with a minimum average of 2.7 and no more than one grade of D or F.

Fall 2012 to Spring 2016

Completion of 24 credits with a minimum average of 3.0 and no more than one grade of D or F.

Fall 1991 to Fall 2012

Completion of ten courses (20 credits). Minimum average 3.0 (with no more than one grade below 1.0).

LL.M. in American Law

Current Grading System:

A+	4.3	C+	2.3
A	4.0	C	2.0
A-	3.7	C-	1.7
B+	3.3	D	1.0
B	3.0	F	0
B-	2.7		

Current Degree Requirements

Completion of twenty-four course credits with at least ten credits per semester. The minimum average for good standing and graduation is 2.3. Minimum course average is 2.0.

LL.M. in Intellectual Property Law

Current Grading System:

A+	4.3	C+	2.3
A	4.0	C	2.0
A-	3.7	C-	1.7
B+	3.3	D	1.0
B	3.0	F	0
C-	2.7		

Current Degree Requirements

Completion of twenty-four course credits with at least ten credits per semester. The minimum average for good standing and graduation is 2.3. Minimum course average is 2.0.

Executive LL.M. in International Business Law

Current Grading System:

A+	4.3	C+	2.3
A	4.0	C	2.0
A-	3.7	C-	1.7
B+	3.3	D	1.0
B	3.0	F	0
B-	2.7		

Current Degree Requirements

Effective Spring 2014, completion of twenty credits with a minimum g.p.a. of 3.0 including the successful completion (CR) of two colloquia.

Grading System prior to Spring 2014

Honors (H)	Credit (CR)
Very Good (VG)	No Credit (NC)
Pass (P)	Fail (F)

Requirements Prior to Spring 2014

Completion of six courses (18 credits) and two colloquia (2 credits) for a total of 20 credits. The minimum passing grade for each course is Pass (P). The minimum passing grade for each colloquium is Credit (CR).

5/2016

Boston University's policies provide for equal opportunity and affirmative action in employment and admission to all programs of the University.

May 19, 2022

The Honorable John Copenhaver, Jr.
Robert C. Byrd United States Courthouse
300 Virginia Street East, Room 6009
Charleston, WV 25301

Re: Recommendation Letter for **Victor Gibson**

Dear Judge Copenhaver:

I write on behalf of Victor Gibson, a 2019 graduate of Boston University School of Law, who is applying for a judicial clerkship with your chambers. I initially met Victor when he enrolled in my Constitutional Criminal Procedure course. Based on his work in that course, I wholeheartedly endorse Victor's candidacy for a judicial clerkship in your chambers.

Victor's classroom and examination performance in Constitutional Criminal Procedure was excellent. He earned an A grade.

I expect a lot from my students. I aggressively question every student. They must come to every class prepared to discuss the assigned materials and provide cogent and substantive answers to my questions. Not being prepared and offering poor answers will result in a student's grade being lowered.

Victor met all of my expectations with flying colors. He was always prepared and regularly provided the best analysis of the assigned cases in a class that had several members of the Boston University Law Review. Victor's classroom answers indicated that he had read the assignments carefully and was focused on what I expected students to grasp when studying the Supreme Court's search and seizure doctrine and Fifth Amendment's Self-Incrimination cases. In sum, Victor's work was superb.

Outside of class, my encounters with Victor convinced me that Victor is committed to being an outstanding member of the legal profession. He is polite, smart and has exceptional work habits.

In closing, I have no reservations in highly recommending Victor Gibson for a judicial clerkship with your chambers. If given the opportunity, I am confident that Victor will be an asset to your chambers. I strongly urge you to interview Victor.

If you have any additional questions about Victor's qualifications, please feel free to contact me. I can be reached by e-mail – tmaclin@bu.edu, or by phone at 617 353 4688.

Yours truly,

Tracey Maclin
Professor of Law

Tracey Maclin - tmaclin@bu.edu - (617) 353-4688

May 19, 2022

The Honorable John Copenhaver, Jr.
Robert C. Byrd United States Courthouse
300 Virginia Street East, Room 6009
Charleston, WV 25301

Re: Recommendation Letter for Victor Gibson

Dear Judge Copenhaver:

I am writing on behalf of Victor Gibson, who is an Assistant Public Defender with the Miami-Dade Public Defender's Office and who is applying for a judicial clerkship with your chambers. I first met Victor in September 2019, when I was assigned as his training attorney at the Public Defender's Office. Due to his excellent research and writing skills, his performance as an effective orator, and his work ethic, I highly recommend Victor Gibson for a judicial clerkship position in your chambers.

Victor's analytical and writing skills have proven to be unrivaled. The Miami-Dade Public Defender's Office recruits its attorneys from across the nation, and hires some of the most talented legal minds. Within just a few weeks of starting, attorneys inherit large caseloads in a fast pace work environment, with the expectation being that they hit the ground running and aggressively litigate their clients' cases. Victor exceeded this expectation, as he quickly demonstrated his skills as a strong advocate. Furthermore, Victor is prolific writer, who wrote and argued multiple nuanced motions to suppress and dismiss. As his training attorney, I personally reviewed many of his motions. I found Victor's writing to be clear, concise, but more importantly, I found his arguments to be creative and thought-provoking.

Additionally, I have had the pleasure of second-chairing motion hearings with Victor. In these hearings, not only did Victor exhibit strong oratory skills, but he also demonstrated a firm command and understanding of the relevant the case law necessary to support his arguments. One particular example of this was when I served as his co-counsel at a motion to suppress hearing involving a client charged with open carry of a weapon. In hopes of further bolstering his argument, I quickly mentioned to Victor the name and relevant facts of a case I came across during a brief recess in the hearing. Without batting an eye, Victor nodded his head in pleasant familiarity, and it became clear to me that he had carefully studied and stored away in his mental rolodex all cases remotely relevant in preparing for this hearing. Victor's analysis, hard work, and thorough preparation and research put towards this case is indicative of his overall abilities as a lawyer.

Further, Victor is a pleasure to work with. Victor takes feedback well, and maintains a positive attitude towards his cases, clients and colleagues. He is an easygoing, reliable team player who his coworkers can count on, whether in the courtroom or at the office. He is smart, personable, and professional, and I strongly believe he will be a great asset to your chambers.

In sum, I strongly recommend Victor for a clerkship position in your chambers. If you have any additional questions about Victor's qualifications, please feel free to contact me. I can be reached via email at autumnraepage@gmail.com, or via phone at 770-365-3964.

Sincerely,

Autumn R. Page

Autumn Page - autumnraepage@gmail.com

Noah Brozinsky
nbrozinsky@gmail.com
858-735-9275

February 2021

To Whom It May Concern,

For eighteen months I had the pleasure of supervising and training Victor Gibson at the Miami Public Defender's Office. Victor consistently showed himself to be intellectually curious, steadfast in his convictions, eager to learn, ambitious, and capable.

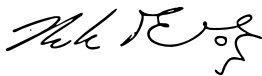
What stands out most is Victor's willingness to do deep-dive legal research. Unsatisfied with old precedent, Victor is often found digging through case-law treasure hunts, trying to find the details, nuances, and caveats he needs to challenge well-settled precedent. In this he's often successful, or at least emerges an expert, keenly aware of fact patterns to anticipate for future use.

I'm consistently impressed with Victor's work ethic: He's often the first person at the office and the last to leave. He's organized; he's focused. He's friendly with support staff, and always willing to help his colleagues. Beyond the office and courtroom, he's a genuinely nice person.

I think Victor would make a valuable addition to any judge's chambers. He can contribute immediately; he writes well; and he clearly wants to partake in projects that matter.

Please feel free to call or email me for any more details regarding Victor Gibson. I strongly recommend you name him as your clerk.

Thank you,



Noah Brozinsky

Victor C. Gibson

1740 NW N River Drive # 318, Miami, Florida 33125 · (813) 777-5294 ·
gibsonvictor92@gmail.com

Writing Sample #2

Attached is a copy of a motion to suppress I drafted, with all identifying information redacted. While this motion did not go to hearing, it nonetheless was effective in helping persuade the State to waive an applicable 10-year minimum mandatory sentence. I wrote this motion without the use of templates or samples, and no one besides myself edited it.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR MIAMI-DADE COUNTY

CASE NO.: (REDACTED)
DIVISION: (REDACTED)
JUDGE: (REDACTED)

THE STATE OF FLORIDA,
Plaintiff,

v.
(REDACTED),
Defendant.

MOTION TO SUPPRESS STATEMENTS, ADMISSIONS, AND/OR CONFESSIONS

COMES NOW THE DEFENDANT, Mr. (Redacted), by and through undersigned counsel and pursuant to Fla. R. Crim. P. 3.190(h), the Fifth Amendment of the United States Constitution, as well as its due process clauses, hereby moving this Honorable Court to suppress any and all statements, admissions, and confessions the Defendant is alleged to have made—specifically, all statements elicited regarding his alleged possession of a firearm during detectives’ custodial interrogation of him—due to these statements having been elicited after the Defendant’s invocation of counsel. In support of this Motion, the Defendant provides the following statement of facts and memorandum of law.

FACTUAL BACKGROUND

On (Redacted), 2019, Detective (Redacted) pursued Mr. (Redacted) on foot and allegedly observed him “drop[] a firearm on the ground after jumping a short cement wall in the rear of (Address Redacted).” Arrest Affidavit, at 1. Detective (Redacted) arrested (Redacted), and Detectives (Redacted) and (Redacted) conducted a video- and audio-recorded interview with him at the (Redacted) police station.

Prior to questioning (Redacted), Detective (Redacted) recited (Redacted) his Miranda rights from a form and asked (Redacted) to initial beside each individually explained right. See

Exhibit A (video- and audio-recorded custodial interrogation of (Redacted)) at 06.45-09:30.

Upon asking (Redacted) if he wished to speak with them without a lawyer present, (Redacted) expressed confusion, and responded by asking “what [do] you mean by that?” Id. at 10:40. This prompted Detective (Redacted) to further explain (Redacted’s) right to counsel, and explained the question was whether (Redacted) “wanted to talk to [him] without having a lawyer present.”

Id. at 10:50—11:00. The following dialogue ensued:

DEFENDANT: “Yea, I think that’ll be best.”

DETECTIVES 1 and 2: “What will be best?” (simultaneously)

DEFENDANT: “Having a lawyer present...I don’t know, I don’t understand like—“

DETECTIVE 1: “It’s fine, I mean it’s a yes or no. Do you want to talk to me or not, that up to you—”

DETECTIVE 2: “I can try to explain it for you if you want before you make your decision. Basically, what he is saying is you have the right to speak to us without having a lawyer here present with you, and you have the right to do so with a lawyer present. It’s your choice. If you choose not to, that’s fine. If you to speak with us, that’s fine as well. But the decision is up to—how old are you?”

DEFENDANT: “Twenty-nine.”

DETECTIVE 2: “The decision is up to you. You’re a twenty-nine year-old man. So you have a—we can’t make it for you. It’s up to you. We’re not—you’re not being forced, coerced, anything like that. It’s totally up to you. Whatever you want to do”

DEFENDANT: “[unintelligible]...if I’m giving up my rights, that’s what you[‘re] saying basically on this paper.”

DETECTIVE 1: “This means that you’re understanding your rights, and anything else I want to explain to you or talk to you about...when you sign yes, we’ll talk about it, when if you sign no, I cannot talk about, you know, anything about the case.”

DETECTIVE 2: “Or then that’s done. We—you can sign it, and we get out of here. If you want your lawyer, we gotta [sic] go. We can’t speak to you anymore.”

DETECTIVE 1: “I know there’s certain things you told me on scene which I would—you know—I can’t get into details until, you know. But, like again, it’s completely up to you. You don’t have to if you don’t want to, and, you know, it’s completely your right.”

Id. at 11:00—12:25.

(Redacted) then reached for the Miranda form and initialed it, indicating he did wish to speak to the detectives without having a lawyer present. Id. at 12:26—12:37. The detectives subsequently interrogated (Redacted) about the firearm they allegedly saw him toss during their pursuit of him, resulting in (Redacted) making a series of inculpatory statements. (Redacted) is currently charged with possession of a firearm as a convicted felon, and resisting an officer without violence.

SUMMARY OF ARGUMENT

(Redacted) unequivocally invoked his right to counsel, and did not knowingly and voluntarily waive this right. Because the detectives extracted inculpatory statements from (Redacted) after his unequivocal invocation of counsel and involuntary waiver, these statements must be suppressed from trial.

ARGUMENT

A. (Redacted) Unequivocally Invoked His Right to Counsel

“Both the United States and Florida Constitutions protect criminal defendants from compelled self-incrimination.” Davis v. State, 153 So. 3d 360, 364 (Fla. 2014) (citing U.S. CONST. amend. V; Art. 1, § 9, Fla. Const.) “The United States Supreme Court has held that law enforcement officers are required to inform suspects of their right to have counsel present during custodial interrogations.” Id. (citing Miranda v. Arizona, 384 U.S. 436, 444 (1966)). “If the individual states that he wants an attorney, the interrogation must cease until an attorney is present.” Miranda v. Arizona, 384 U.S. at 474. “After such warnings have been given,...the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement.” Id. at 479.

“Invocation of the Miranda right to counsel ‘required, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney.’” Davis v. United States, 512 U.S. 452, 459 (1994) (citing McNeil v. Wisconsin, 501 U.S. 171, 178 (1991)). Once a suspect invokes his right to counsel, officers must “scrupulously honor” the suspect’s request, and may not continue their interrogation without his or her lawyer being present. See Shelly v. State, 262 So. 3d 1, 14 (Fla. 2018) (citing Traylor v. State, 596 So. 2d 957, 966 (Fla. 1992)); see also Michigan v. Mosley, 423 U.S. 96 (1975) (“The admissibility of any statements obtained after the accused has invoked his right to counsel and decided to remain silent ‘depends under Miranda on whether his ‘right to cut off questioning’ was ‘scrupulously honored.’”). “But if a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect *might* be invoking the right to counsel,” law enforcement is not legally required to cease questioning. Id. (emphasis in original).

In the case at bar, (Redacted) unequivocally invoked his right to counsel. Specifically, (Redacted) responded to Detective (Redacted’s) question of whether he wanted a lawyer by answering “yea, I think that’ll be best.” Exhibit A at 11:00—11:05. Upon both detectives simultaneously asking “what would be best,” (Redacted) clarified that he thought “having a lawyer present” would be ideal. Id. In making these statements, (Redacted) communicated to officers in no uncertain terms he was invoking his right to counsel.

The facts here mirror those the Second District Court of Appeal recently dealt with in N.J.O. See N.J.O. v. State, 292 So. 3d 941 (Fla. 2d DCA 2020). There, law enforcement sought to interview the defendant at a police station. Id. at 493. Upon asking the defendant whether he was willing to speak in the absence of counsel, the defendant responded, “I don’t know what all

these legal questions mean so I want to, like have somebody with me. I'm not trying to be difficult or anything. Like, I just don't know, because you guys word stuff funny sometimes.” Id. at 494-95. On appeal, the court found the defendant to have unequivocally invoked his right to counsel, and observed that the defendant's express lack of understanding and confusion cut in favor its finding. See id. at 496 (“N.J.O. clearly stated that he did not understand the legal questions that were being asked and clearly stated that he wanted somebody to be with him. N.J.O. also indicated that he was concerned that questions would be “worded funny”, he expressed concern that the detective was using ‘big words’ that N.J.O. did not understand, and he apologized for being difficult. This statement was sufficiently clear to inform the officers that N.J.O. wanted to invoke—not waive—his Miranda rights”).

Just as in N.J.O., (Redacted) similarly stated, with sufficient clarity, that he thought it best to have a lawyer present, and that he did not know nor understand everything going on around him. See Exhibit A at 11:06—11:13 (“having a lawyer present...I don't know, I don't understand like—”). Thus, (Redacted's) invocation of his right to counsel was unequivocal.

Moreover, Gilbert provides us with a fact-pattern analogous to the one at bar. See Gilbert v. State, 104 So. 3d 1123 (Fla. 4th DCA 2012). That case involved a defendant who “invoked his right to counsel by stating, ‘I[‘d] rather have somebody represent me.’” Id. at 1124. Detectives nonetheless continued to speak with the defendant and extracted a confession. See id. at 1124-26. On appeal, the Fourth DCA found law enforcements tactics to be improper, and deemed the statements inadmissible. See id.

Here, (Redacted's) stating that he thought it would be best for counsel to be present mirrors the invocation made in Gilbert. Thus, prefacing one's invocation of counsel with a modal auxiliary verb (i.e. ‘I would rather’, ‘that will be’) is not fatal to finding that the invocation was

sufficiently clear. See id.; see also Bean v. State, 752 So. 2d 644 (Fla. 5th DCA 2000) (finding that confession obtained after defendant stated ‘I feel that I should be able to talk to a lawyer’ should have been suppressed). Rather, as shown in Gilbert, it constitutes a statement that can “reasonably be construed to be an expression of a desire for the assistance of an attorney.” Davis v. United States, 512 U.S. 452, 458 (1994) (citing McNeil v. Wisconsin, 501 U.S. 171, 178 (1991)). Therefore, (Redacted) unequivocally invoked his right to counsel.

B. Detectives Were Required to Stop Their Interrogation of (Redacted) Once He Invoked His Right to Counsel

Once a suspect sufficiently informs officers that he wishes to invoke his right to counsel, law enforcement must cease all questioning. See, e.g., Shelly v. State, 262 So. 3d 1, 17 (Fla. 2018) (holding that it was a violation of the suspect’s Miranda rights for the police to attempt to coax the suspect into permitting further interrogation after the suspect had asserted his right to remain silent); See also Green v. State, 69 So. 3d 351, 353 (Fla. 2d DCA 2011) (finding it improper that “detectives simply continued their efforts to get [the defendant] the answer their questions” after he indicated he wanted to have an attorney); Calder v. State, 133 So. 3d 1025, 1030-31 (Fla. 4th DCA 2014) (concluding that law enforcement’s efforts to speak with Calder have he invoked his right to counsel constituted ‘interrogation’ under Miranda because the detective should have known his efforts were “reasonably likely to elicit an incriminating response”) (quoting Rhode Island v. Innis, 446 U.S. 291, 301 (1980)); Black v. State, 59 So. 3d 340, 346 (Fla. 4th DCA 2011) (holding that detective violated Miranda by continuing to ask defendant whether he wanted to talk to him about the crimes after the defendant had clearly invoked his right to counsel); Gilbert v. State, 104 So. 3d 1123, 1125 (Fla. 4th DCA 2012) (finding that officers violated Miranda when “almost immediately after [the defendant] invoked right to counsel, the detectives engaged in interrogation by telling [the defendant] that they were trying to ‘protect’

him and encouraging him to tell his ‘side of the story’); N.J.O. v. State, 292 So. 3d at 496 (“once suspect has invoked his or her rights, it is improper for officers to coax or cajole a suspect into waiving those rights”).

Here, (Redacted) unequivocally invoked counsel, which should have caused the detective to cease all questioning of him. Instead, they pressured and coaxed him into speaking with them by repeating to him that it was his decision to make and explaining his right to counsel once more, effectively causing him to second-guess his initial invocation, succumb to the detectives’ pressure, and ultimately make incriminating statements. The precedent cited above makes it overwhelmingly apparent this this was improper, and in violation of (Redacted’s) Miranda rights.

C. Due to Detectives’ Violation of (Redacted’s) Miranda Rights, Any Subsequent Waiver Must Be Deemed Involuntary

“[T]he ultimate issue of voluntariness is a legal rather than factual question.” Ramirez v. State, 739 So. 2d 568, 575 (Fla. 1999) (citing Miller v. Fenton, 474 U.S. 104, 109 (1985)). Once an accused invokes counsel, he or she may be said to have waived this right upon initiating further conversation, and, after being reminded of his or her rights, waiving these rights. See Welch v. State, 992 So. 2d 206, 214 (Fla. 2008) (“even when an accused has invoked the right to silence or right to counsel, if the accused initiates further conversation, is reminded of his rights, and knowingly and voluntarily waives those rights, any incriminating statements made during this conversation may be properly admitted”) (citing Oregon v. Bradshaw, 462 U.S. 1039 (1983)); see also Shelly, 262 So. 3d at 11 (“we hold that Welch is the correct standard when evaluating circumstances where an accused has invoked his or her right to counsel and then subsequently has allegedly reinitiated communication with officers).

Here, (Redacted) did not initiate further conversations with detectives, unlike the suspect in Welch. See id. (finding defendant to have initiated conversation post-invocation upon asking

officers “what is going to happen to me now.”). Rather, (Redacted) remained mute as the detectives explained his rights once more in a final effort to secure a waiver. Thus, just as in Shelly, any subsequent waiver (Redacted) may have appeared to have given was the product of detectives’ “coercively persistent and repeated efforts to wear down” his resistance and induce him “to continue the interrogation and eventually confess.” Shelly, 262 So. 3d at 17. Accordingly, because (Redacted) did not “envince[] a willingness and a desire for a generalized discussion about the investigation,” this Court must find any waiver subsequent to (Redacted’s) invocation of counsel to have been involuntarily made. Bradshaw, 462 U.S. at 1045-46.

D. The State Carries the Burden of Showing (Redacted) to Have Waived His Right to Counsel

“The State bears the burden of providing that the waiver of the Miranda rights was knowing, intelligent, and voluntary.” Ramirez v. State, 739 So. 2d 568, 575 (Fla. 1999) (citing Sliney v. State, 699 So. 2d 662, 667 (Fla. 1997)); Thompson v. State, 548 So. 2d 198, 204 (Fla. 1989)). “Moreover, where a confession is obtained after the administration of the Miranda warnings, the State bears a ‘heavy burden’ to demonstrate that the defendant knowingly and intelligently waived his other privilege against self-incrimination and the right to counsel...”. Id. (citing Colorado v. Connelly, 479 U.S. 157, 167 (1986); Fare v. Michael C., 442 U.S. 707, 724 (1979); Miranda, 384 U.S. at 475; W.M. v. State, 585 So. 2d 979, 981 (Fla. 4th DCA 1991)). Further, “[t]he State must establish its ‘heavy burden’ by the ‘preponderance of the evidence.’” Id. (citing Connelly, at 167-68; Balthazar v. State, 549 So. 2d 661 (Fla. 1989); W.M., 585 So. 2d at 983).

Moreover, when a defendant’s waiver comes on the heels of law enforcement’s coercion or cajoling, “the State is unable to meet its heavy burden of demonstration that [the defendant’s] subsequent Miranda waiver was voluntarily made.” Shelly, 262 So. 3d at 17.

E. (Redacted's) Statements Must be Suppressed

“[T]he State ‘must not be allowed to build its case against a criminal defendant with evidence acquired in contravention of constitutional guarantees and their corresponding judicially created protections, such as the ‘prophylactic Miranda rules.’” Cuervo v. State, 967 So. 2d 155, 167 (Fla. 2007) (quoting Michigan v. Harvey, 494 U.S. 344, 351 (1990)). Accordingly, “[a]ny statements that are produced as a result of a Miranda violation must be suppressed.” Shelly, 262 So. 3d at 17 (Fla. 2018) (citing Miranda, 384 U.S. at 479)).

Due to detectives’ violation of (Redacted’s) Miranda rights, this Court must suppress from trial all inculpatory statements made during detectives’ custodial interrogation of him.

WHEREFORE, the Defendant respectfully requests this Honorable Court enter an Order suppressing the aforementioned statements and any reference thereto during the trial of this case.

Respectfully submitted,

/s/ Victor C. Gibson
Florida Bar No. 1018007